

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PAT OMAN,)	
)	
Plaintiff,)	Case No. CV05-558-HU
)	(Lead Case)
vs.)	
)	Case No. CV05-1715-HU
PORTLAND PUBLIC SCHOOLS,)	
Multnomah School District No. 1,)	
et al.)	

Defendants.

OPINION AND
ORDER

PAT OMAN,)
)
Plaintiff,)
vs.)
)
PORTLAND PUBLIC SCHOOLS, et al.)
)
Defendants.)

Pat Oman
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Pro se

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HUBEL, Magistrate Judge:

These are consolidated actions¹ brought by Pat Oman pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1487. The defendants are Portland Public Schools (PPS) and individuals employed with PPS (collectively, the PPS defendants); the Oregon Department of Education (ODE), State Superintendent for Public Instruction Susan Castillo, and individuals employed by the ODE (collectively, the state defendants).

Motion to Reconsider

Ms. Oman moves the court to reconsider its ruling of December 22, 2005 (doc. #31), dismissing claims asserted in the First Amended Complaint in CV 05-558-HU, under the Americans with Disabilities Act (ADA), Titles II and IV, 42 U.S.C. §§ 12101-12213, and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, for, among other things, Pat Oman's lack of standing. Ms. Oman bases her motion on a recent case, Barker v. Riverside County Office of Education, 2009 WL 3401986 (9th Cir. Oct. 23, 2009), in

¹C.O. v. Portland Public Schools, et al., CV 05-558-HU and Oman v. Portland Public Schools, et al., CV 05-1715-HU, were consolidated by order of the court on May 3, 2006 (doc. # 53).

1 which the Ninth Circuit held that a person without a disability who
2 advocated on behalf of a person with a disability had standing to
3 assert a claim for retaliation pursuant to section 504 of the
4 Rehabilitation Act and Title II of the ADA. The defendants oppose
5 the motion, primarily on the ground that Ms. Oman has not
6 administratively exhausted such a claim. I am unpersuaded by the
7 defendants' exhaustion argument, but nonetheless will adhere to my
8 original ruling.

9 The First Amended Complaint in CV 05-558, which was filed on
10 June 28, 2005, alleged retaliation against Pat Oman under the IDEA
11 claim, but did not allege retaliation in violation of the ADA or
12 the Rehabilitation Act. The allegations in the claims under the ADA
13 and Rehabilitation Act were based on the failure to provide
14 education services mandated by the IDEA to Ms. Oman's son, C.O.,
15 alleged to have a learning disability,² although Ms. Oman did
16 incorporate by reference into these claims all the allegations of
17 the IDEA claim.³ The court dismissed the claims asserted by Ms.

18
19 ² Both IDEA and § 504 of the Rehabilitation Act require the
20 provision of a free appropriate public education (FAPE) to
21 children with disabilities. The requirements are similar, but not
22 identical. See, e.g., Mark H. v. Paul Lemahieu, 513 F.3d 922, 933
(9th Cir. 2008). Remedies are available under § 504 for acts that
also violate the IDEA. Id. at 934.

23 ³Ms. Oman's allegations were as follows:

24 During two separate pre-hearing conferences for an
25 administrative due process hearing (DP04-110), defendant
26 Constance Bull stated that the parent could not contact or
27 speak to C.O.'s teachers or other PPS staff, and stated her
intention of prohibiting C.O.'s teachers from speaking to
the parent/plaintiff, in retaliation for the plaintiffs'
participation in a due process hearing and because of

1 Oman on behalf of her son without prejudice, on the ground that Ms.
2 Oman, a non-attorney, could not bring a *pro se* action on behalf of
3 another person. The court held that Ms. Oman could not assert
4 claims on her own behalf under the Rehabilitation Act and the ADA
5 because she had not alleged that she was disabled.

6 In the Second Amended Complaint for CV 05-558-HU, filed on
7 January 23, 2006, Ms. Oman asserted claims for retaliation against
8 her in violation of IDEA and 42 U.S.C. § 1983. Second Amended
9 Complaint ¶¶ 22-25, 29, 58-63. On November 7, 2006, the court
10 entered an Opinion and Order holding that Ms. Oman could not assert
11 a claim for monetary relief under 42 U.S.C. § 1983 for alleged
12

13 parent's opposition to PPS's discriminatory and retaliatory
14 practices. During the course of the due process hearing
15 Defendant Bull also placed conditions on access to C.O.'s
16 educational records, and withheld records from the parent,
in retaliation for plaintiffs' participation in a due
process hearing. First Amended Complaint ¶ 33.

17 Defendants Maxine Kilcrease and Constance Bull unreasonably
18 delayed reimbursement for a properly obtained IEE
19 [independent educational evaluation], and this was in
20 retaliation for the plaintiffs' complaints about C.O.'s
21 education, and an attempt to coerce the parent to abandon
22 the due process hearing. Defendants Bull and Kilcrease
required a confidentiality agreement as a precondition of
reimbursement, a condition to which the plaintiffs agreed;
this also was in retaliation for the parent having filed a
complaint with ODE. *Id.* at ¶ 34.

23 In response to plaintiffs' concerns about C.O.'s education,
24 filing complaints with the SEA under the state complaint
25 process, initiating a due process hearing, and expressing
26 opposition to illegal and discriminatory practices,
27 defendants PPS, Kilcrease, and Bull intentionally retaliated
against the plaintiffs, who were consequently prevented from
obtaining a fair and independent administrative due process
hearing. *Id.* at ¶ 35.

1 violations of the IDEA.⁴ (Doc. #76). Subsequent authority from the
2 Ninth Circuit has confirmed this decision. Blanchard v. Morton Sch.
3 Dist., 509 F.3d 934, 937-38 (9th Cir. 2007).

4 The issue raised by Ms. Oman's motion to reconsider is
5 whether, in light of the Barker decision, her allegations in the
6 First Amended Complaint support a claim that she was retaliated
7 against for advocating on behalf of her disabled son in violation
8 of the ADA and the Rehabilitation Act, and whether that claim may
9 include money damages.

10 As the Blanchard case has made clear, the "comprehensive
11 enforcement scheme of the IDEA" includes a judicial remedy for
12 violation of any right "relating to the identification, evaluation,
13 or educational placement of a child, or the provision of a free
14 appropriate public education to such child." 509 F.3d at 937-38.
15 Ms. Oman's factual allegations in support of the retaliation claim
16 in the First Amended Complaint are all premised on conduct that
17 violates rights granted to parents by the IDEA: denying the parent
18 access to the child's educational records, refusing reimbursement
19 to the parent for an IEE, and hindering the parent's right to a
20 fair due process hearing. Congress has not provided the remedy of
21 money damages for IDEA violations, as it did for discrimination and
22 retaliation claims affecting an employee's rights, like those
23 asserted in Barker.

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25
26 ⁴ Money damages are not available under the IDEA. Robb v.
27 Bethel Sch. Dist. # 403, 308 F.3d 1047, 1049 (9th Cir. 2002). Nor
can *pro se* litigants recover attorney's fees.

1 I find persuasive the First Circuit's holding that where the
2 underlying claim is one for violation of the IDEA, plaintiff may
3 not use any other statute to evade the IDEA's limited remedial
4 structure. Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 29 (1st Cir.
5 2006). The difference between this case and the Barker case is that
6 the IDEA does not provide for money damages, while the Barker
7 plaintiff's employment rights do. In Barker, the retaliation
8 against plaintiff for advocating on behalf of her students took the
9 form of depriving her of employment rights that were independent of
10 the IDEA and answerable in damages. In this case, Ms. Oman alleges
11 that the retaliation against her for advocating on behalf of her
12 child took the form of depriving her of rights conferred solely by
13 the IDEA--rights not independent of IDEA as in Barker. The IDEA
14 does not provide monetary damages as a remedy for violation of the
15 parental rights conferred by the IDEA. I conclude that allowing Ms.
16 Oman to claim money damages is contrary to Congress's intent.

17 To illustrate, Ms. Oman's remaining retaliation claims are
18 Claim Nine in CV 05-558 and Claim Seventeen in CV 05-1715. Against
19 PPS, these claims assert that defendant Bull hindered Ms. Oman's
20 ability to exercise her procedural rights under the IDEA and that
21 PPS failed to provide the additional instruction to C.O. as ordered
22 by the ODE hearings officer. Against ODE, they assert that ODE
23 failed to investigate PPS's denial of reimbursement to Ms. Oman for
24 the IEE; failed to provide Ms. Oman adequate notice of the
25 procedural requirements of the IDEIA, effective in 2004; ratified
26 PPS's failure to provide the additional instruction to C.O., and

1 refused to file the administrative record of DP 04-110 for two
2 years.

3 It is these claims, and these claims only, that remain for
4 trial, without the possibility of money damages.

5 **Motion for Sanctions**

6 Ms. Oman also moves for sanctions pursuant to Rule 11 of the
7 Federal Rules of Civil Procedure against the state defendants (doc.
8 # 162). The basis for the motion is that the state defendants
9 answer, filed on February 27, 2006, contained only a general denial
10 of paragraphs 19 through 66 of the Second Amended Complaint. Ms.
11 Oman states that many of the paragraphs included in the general
12 denial contained specific, verifiable statements of fact, and
13 therefore failed to comply with the requirement of Rule 8(b)(3) of
14 the Federal Rules of Civil Procedure that a party not intending to
15 deny all the allegations of a pleading must either specifically
16 deny designated allegations or generally deny all except those
17 specifically admitted.

18 The state responds that the Second Amended Complaint was
19 voluminous and complicated, with the "material facts and legitimate
20 claims ... far from obvious." Affidavit of Kenneth Crowley ¶ 4. Mr.
21 Crowley states further that the answer was filed in good faith. Id.
22 at ¶ 5.

23 A fundamental purpose of Rule 11 is to "reduce frivolous
24 claims, defenses or motions and to deter costly meritless
25 maneuvers, thereby avoiding delay and unnecessary expense in
26 litigation. Christian v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir.

2002). The rule imposes on an attorney the duty to conduct a reasonable factual investigation and perform adequate legal research to confirm that the underpinnings of the pleading are "warranted by existing law or a good faith argument for an extension, modification or reversal of existing law." Id. Nonetheless, a finding of significant delay or expense is not required under Rule 11. Id.

The subjective intent to file a meritorious document is of no moment. G.C. and K.B. Investments, Inc. v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003). The standard is reasonableness, meaning that the conduct tested is that of a competent attorney admitted to practice before the district court. Id.

The state's general denials in its answer do not qualify for the imposition of sanctions under Rule 11. Accordingly, the motion for sanctions is denied.

Conclusion

Ms. Oman's motion for reconsideration (doc. # 161) is GRANTED, but the court adheres to its original rulings. Ms. Oman's motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure (doc. # 162) is DENIED.

IT IS SO ORDERED.

Dated this 18th day of December, 2009.

/s/Dennis James Hubel

Dennis James Hubel
United States Magistrate Judge